

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 297 of 1999

in

SPECIAL CIVIL APPLICATION No 668 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE C.K.THAKKER

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

SARVODAY AGRO CONSUMER SANSTHA

Versus

CHIEF DIVISIONAL MANAGER

Appearance:

MR RC JANI for Appellant
MR GN SHAH for Respondent.

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE C.K.THAKKER

Date of decision: 01/04/99

ORAL JUDGEMENT: (Per C.K. Thakkar, J.)

Admitted. Mr.G.N. Shah appears and waives service of notice of admission on behalf of the respondent. In the facts and circumstances, the matter is taken up for final hearing today.

This appeal is directed against the judgment and order passed by the learned Single Judge in Special Civil Application No.668 of 1999, dated March 3, 1999. By the said order, the learned Single Judge dismissed the petition.

We have heard Mr.Jani, learned counsel for the appellant, and Mr.G.N. Shah, learned counsel for the respondent.

Mr. Jani raised several contentions. He, however, mainly submitted that almost in similar circumstances, Letters Patent Appeal Nos. 130 of 1999 and 131 of 1999 came up before a Division Bench and on 3rd March, 1999, the Division Bench allowed both the appeals and directed the respond...

petroleum products to the appellants subject to certain terms and conditions. He mainly relied upon the following observations of this Court :-

"... The respondent-Oil Company will supply petroleum products to the appellants subject to the condition that the appellants shall not supply / deliver any quantities of petrol / diesel from their outfits to any other person, firm or company or those engaged in tourist and / or transport activities since the outfits are intended for use of only those members of the Society, who are farmers, agriculturists or fishermen and for such members, who own commercial vehicles and those engaged wholly by such members. If there is any violation of this condition, the respondent-Company shall be entitled to immediately stop the supplies to the appellants. The appellants shall not enrol any firm or company as their members and no person who is not a farmer, agriculturist or fisherman, shall be enrolled as a member. If an individual is enrolled as a member, but such member is not an agriculturist, farmer or fisherman, then such member would be expelled and pending expulsion, he will not be supplied petroleum

products by the appellants. The appellants shall submit a list of its such members, who are agriculturists, farmers or fishermen, to the respondent and shall inform the respondent-Company of any changes made therein. Petrol / diesel will be supplied within one week from today.

The learned counsel for the respondent states that a Committee, consisting of Officers of Oil Industry, has already been constituted for the purpose, which shall visit the appellants to verify the genuineness of the members and their operations. The report and recommendation of the said Committee will be forwarded to the respondent-Company, which will forward

the same to the Competent Authority for decision on recommendations. If any action is to be taken against the appellants by the respondent-Company pursuant to such decision, then a notice, in writing, will be issued to the appellants to show cause within one week. Any decision taken by the respondent-Company pursuant to the show cause notice shall be communicated to the appellants, but will not be implemented for a period of 10 days thereafter...."

Mr.Shah, learned counsel for the Corporation, did not dispute the fact that the case of the appellant-Society is similar to that of the appellants of Letters Patent Appeal Nos. 130 of 1999 and 131 of 1999. He, however, placed reliance on the affidavit-in-reply filed in the present proceedings.

The Division Bench, in those two Appeals, considered the contentions raised on behalf of the appellants as well as respondents and in the facts and circumstances directed the Corporation to supply / deliver petrol / diesel and in these circumstances, without entering into larger question as to whether a petition under Article 226 of the Constitution could have been entertained and the learned Single Judge was justified in dismissing the petition on the ground that in contractual relations, no petition would, ordinarily, be entertained in exercise of extraordinary powers under Article 226 of the Constitution of India, in our opinion, following the decision in Letters Patent Appeal Nos. 130 of 1999 and 131 of 1999, ends of justice would be met if

the following direction is issued to the respondent-Corporation :-

The respondent-Oil Company will supply petroleum products to the appellant subject to the condition that the appellant shall not supply / deliver any quantities of petrol / diesel from its outfits to any other person, firm or company or those engaged in tourist and / or transport activities since the outfits are intended for use of only those members of the Society, who are farmers, agriculturists or fishermen and for such members, who own commercial vehicles and those engaged wholly by such members. If there is any violation of this condition, the respondent-Company shall be entitled to immediately stop the supplies to the appellant. The appellant shall not enrol any firm or company as its member and no person who is not a farmer, agriculturist or fisherman, shall be enrolled as a member. If an individual is enrolled as a member, but such member is not an agriculturist, farmer or fisherman, then such member would be expelled and pending expulsion, he will not be supplied petroleum products by the appellant. The appellant shall submit a list of its such members, who are agriculturists, farmers or fishermen, to the respondent and shall inform the respondent-Company of any changes made therein. Petrol / diesel will be supplied within one week from today.

The learned counsel for the respondent states that a Committee, consisting of Officers of Oil Industry, has already been constituted for the purpose, which shall visit the appellant to verify the genuineness of the members and their operations. The report and recommendation of the said Committee will be forwarded to the respondent-Company, which will forward the same to the Competent Authority for decision on recommendations. If any action is to be taken against the appellant by the respondent-Company pursuant to such decision, then a notice, in writing, will be issued to the appellant to show cause within one week. Any decision taken by the respondent-Company pursuant to the show cause notice shall be communicated to the appellant, but will not be implemented for a period of 10 days thereafter.

Letters Patent Appeal is accordingly disposed of.
In the facts and circumstances of the case, no order as
to costs. Liberty to apply in case of difficulty.

Direct service is permitted.

(apj)